M.P. MACHINERY (M) SDN. BHD.

v.

PUBLIC PROSECUTOR

HIGH COURT SABAH & SARAWAK, KOTA KINABALU
TUAN TEE AH SING JC
[CRIMINAL APPEAL NO. K41-14 OF 1995]
5 DECEMBER 1995

CRIMINAL PROCEDURE: *Order of forfeiture - Price-controlled goods - Failure to display price tags - Whether goods price-controlled goods - Appellant charged under Price Control Act 1946 - Forfeiture ordered under s. 407(2) Criminal Procedure Code - Whether valid - Provisions of Criminal Procedure Code - Whether irrelevant - Proper order - Whether to be made under s. 14(2)(b) of Price Control Act - Whether order could be validated by way of revision - Price Control (Indication of Price by Retailers) Order 1993 Regulation 3(1) - Price Control Act 1946 ss. 13(1)(d), 14(2)(a) & (b), 22(2) - Criminal Procedure Code s. 407(2).*

INTERPRETATION: *Section 14(2) Price Control Act 1946.*

The appellant, a retail trader, was convicted of an offence under Regulation 3(1) of the Price Control (Indication of Price by Retailers) Order 1993, for failing to display price tags in respect of three items which it had displayed for sale. Pursuant to s. 22(2) of the Price Control Act 1946 (the Act), a fine of RM1,000 was imposed by the learned Magistrate, and further, the said three items were confiscated and ordered to be forfeited under s. 407(2) Criminal Procedure Code.

In this appeal the appellant sought to challenge the validity of the forfeiture order and argued (1) that no power to forfeit accrued to the Magistrate under s. 22 of the Act (2) that the Magistrate was wrong in holding that the goods could be forfeited under s. 407(2) Criminal Procedure Code and (3) that the forfeited items were not "price-controlled goods" and so, even if power to forfeit was given to the Magistrate under s. 14(2)(a) of the Act, that section was applicable only to "price-controlled goods", and hence, could not be invoked. The Deputy Public Prosecutor submitted that the order was covered by s.14(2)(b) of the Act. That section, according to the DPP, gave the Magistrate a discretion whether to order forfeiture or not.

Held:

[1] It is abundantly clear that under s. 14(2)(b) of the Act the Court has a discretion whether to forfeit or not to forfeit any price controlled goods seized. In the event the issue here must turn on whether the goods as stated in the charge were "price-controlled" goods or not.

[2] Section 14(4) of the Price Control Act stipulates that the expression "price-controlled goods" shall include any goods in respect of which the Price Controller has prescribed marks or labels to be displayed under s. 13(1)(d). This being the case, it is clear therefore that by virtue of s. 14(4) of the Act, the goods as described in the charge are "price-controlled goods" for the purposes of s. 14 of the Act.. The learned Magistrate, therefore, has the discretion to order forfeiture of the goods as described in the charge under s. 14(2)(b) of the Act.

[3] The Price Control Act deals with a special case and to that extent the general provisions of the Criminal Procedure Code, such as that of s. 407(2) here, do not affect its operation. In the event, the Magistrate should have exercised the discretionary power of forfeiture under s. 14(2)(b) of the Act and not s. 407 of the CPC. Be that as it may, on the facts, the learned Magistrate had exercised his discretionary power to order forfeiture correctly. The order of forfeiture is therefore confirmed save for an order, by way of revision, that that forfeiture be made pursuant to s. 14(2)(b) of the Act.

[Order accordingly]

Case referred to:
PP v. Chu Beow Hin [1982] 1 MLJ 135 ***(foll)***

Legislation referred to:
Criminal Procedure Code, s. 407(2)
Price Control Act 1946, ss. 14, 14(2), 14(2)(b), 14(2)(a), (b), 22
Price Control (Amendment) Act 1994, ss. 13, 14, 14(2)(b)
Price Control (Indication of Price by Retailer) Order 1993, Reg. 3(1)

For the appellant - Peggy Liow; M/s. Jayasuriya Kah & Co.
For the respondent - Osman bin Ujang, DPP

JUDGMENT

Tee Ah Sing JC:

MP Machinery (Malaysia) Sdn. Bhd. ("the appellant") was charged as follows:

> Bahawa kamu pada 4 Mei 1994 kira-kira jam 12.30 tengah hari di premis MP Machinery (Malaysia) Sdn. Bhd., Lot 3, Inanam Baru, Phase III, Batu 5.1/2, jalan Tuaran, Inanam Kota Kinabalu, di dalam daerah Kinabalu, di dalam negeri Sabah sebagai penjual runcit barang-barang telah didapati tidak meletakkan label, tag atau tanda pada barang-barang berikut iaitu:
>
> 1. Pam Air jenama Robin model EY15 4 unit
> 2. Injin Suzuki model V120 (3.8) sebanyak 1 unit, dan
> 3. Pam Air Suzuki model V120 (3.8) sebanyak 1 unit,

Yang dipamerkan untuk jualan dalam premis kamu, menunjukkan harga tunai bagi-tiap satu unit barang-barang berkenaan, dan dengan demikian kamu telah melanggar Perintah 3(1) Perintah Kawalan Harga (Penandaan Harga Oleh Penjual Runcit) 1993, dan disebabkan oleh Perintah 5, perintah-perintah tersebut, kamu telah melakukan suatu kesalahan di bawah Akta Kawalan Harga 1946 dan boleh dihukum di bawah s. 22(2) Akta yang sama (Undang-Undang Malaysia Akta 121 - Semakan 1973).

The appellant pleaded guilty to the said charge by its director. The appellant was fined RM1,000 and the subject matter of the charge were confiscated and forfeited by the learned Magistrate under s. 407(2) of the Criminal Procedure Code ("the CPC").

Firstly it is the contention of the learned Counsel for the appellant that the learned Magistrate did not have the power to make an order of forfeiture under s. 22 of the Price Control Act 1946 ("the Act"). Secondly the learned Counsel for the appellant submitted that the learned Magistrate erred in law in holding that the goods can be forfeited by virtue of s. 407(2) of the CPC. She also contended that there are no special provisions relating to forfeiture save as to s. 14(2)(a) and (b) which relates to price-controlled goods in the Act which grants the Court the power to order forfeiture. And the specific power of forfeiture applies only when there is price controlled goods. It is her submission that the subject matter of the charge are not price controlled goods.

The third ground of appeal is that the order of forfeiture of the goods was excessive in view of the mitigating factors.

The learned Deputy Public Prosecutor submitted that the learned Magistrate has the discretion to order forfeiture of the goods under s. 14(2)(b) of the Act. He also submitted that the requirements of price tags is for the information of the public regarding the prices of goods to avoid manipulation of prices of goods by businessman.

Section 14(2) of the Act reads as follows:

(2) Where any price-controlled goods have been seized under subsection (1)(a), then:

(a) if, within thirty days of the seizure, no proceedings are instituted against any person for an offence alleged to have been committed in relation to those goods, the goods and accompanying appliances shall be restored to the person from whom they were seized if he can be found and, if not, shall be disposed of as may be directed by a Magistrate; or

(b) if, within thirty days of the seizure, proceedings are instituted against any person, the goods and accompanying appliances may be forfeited or otherwise disposed of in such manner as the Court may direct:

> Provided that where any goods which have been seized under subsection (1)(a) are of a perishable nature they may be sold by the order of the Price Controller, the Deputy Price Controller or any Assistant Price Controller and this subsection shall apply to the disposal of the proceeds of the sale in the same manner as they would have applied to the disposal of those goods if the goods had not been sold.

Subsection (2) of s. 14 of the Act has been amended by the Price Control (Amendment) Act 1994 (Act A 894). This amendment came into force with effect from 1 August 1994.

In the present appeal the relevant provision to apply is the unnamed subsection (2) of s. 14 of the Act.

The provisions of s. 14(2)(b) of the Act has been lucidly explained in the case of *PP v. Chu Beow Hin* [1982] 1 MLJ 135 where His Lordship Raja Azlan Shah Ag. LP (as he then was) delivering the judgment of the Federal Court at pp. 136 and 137 said:

> We take the view that the enacting words of s. 14(2)(b) are not only very clear, but they are also direct. If proceedings are instituted within thirty days of the seizure of goods by any of the officers named in s. 14(1) of the Act, the Court may, *inter alia*, forfeit or otherwise dispose them in such manner as it may direct. What could be plainer than that? In such a case the Court must give effect to the clear and explicit language of the enacting words of the subsection.

And further down at p. 137 His Lordship said:

> Forfeiture clauses are common in penal statutes. They can of course take many forms. We reiterate that there are cogent reasons of policy why the Price Control Act was passed. It provides for a forfeiture provision as an added penalty because we think that parliament must have intended that a limited penalty without the forfeiture clause may prove illusory to remedy the mischief.

So it is abundantly clear that under s. 14(2)(b) of the Act the Court has a discretion whether to forfeit any price controlled goods seized or not.

The issue in the present appeal is are the goods as stated in the charge "price-controlled goods".

The Price Control (Indication of Price by Retailer) Order 1993 (P.U.(A) 137/93) was made pursuant to the powers conferred by para. (d) of subsection (1) of s. 13 of the Act.

And subsection (4) of s. 14 of the Act provides that:

> (4) For the purpose of this section, the expression "price-controlled goods" shall include any goods or classes of goods in respect of which the Price Controller has prescribed marks or labels to be displayed under s. 13(1)(d).

So it is clear by virtue of subsection (4) of s. 14 of the Act that the goods as described in the charge are "price controlled goods" for the purposes of s. 14.

As such I am of the view that the learned Magistrate has the discretion to order forfeiture of the goods as described in the charge under s. 14(2)(b) of the Act.

However the learned Magistrate made the order of forfeiture under s. 407(2) of the CPC.

I shall now revert to the case of *PP v. Chu Beow Hin* [1982] 1 MLJ 135 where his Lordship Raja Azlan Shah Ag. LP (as he then was) at p. 137 said:

> Lastly, we need to say something on the provision of s. 407 of the Criminal Procedure Code. The learned Judge seems to think it applies in the present case because there is no express provision in the said Act regarding forfeiture. Section 407 enacts that the Court's power to order forfeiture is "subject to any special provisions relating to forfeiture contained in the written law under which the conviction was had." That in our opinion is a general provision. The Price Control Ordinance 1946, the precursor to the Price Control Act was passed subsequently and brought into effect on 1 October 1946. It is a special enactment, and in passing it the legislature had its intention directed to the special case which the statute was meant to meet, and considered and provided for all the circumstances of the special case. Where a special provision is made in a special statute that special provision excludes the operation of a general provision in the general law - generalibus specialia derogant. Therefore the Price Control Act deals with a special case and to that extent the general provisions of the Criminal Procedure Code do not affect is operation.

In view of the decision of the aforesaid case I am of the view that the learned Magistrate should have exercised the discretionary power of forfeiture under s. 14(2)(b) of the Act and not s. 407(2) of the CPC.

From the grounds of decision of the learned Magistrate I find that he has exercised his discretionary power to order forfeiture correctly.

In view of the foregoing I dismiss the appeal against the forfeiture. I hereby confirm the order of forfeiture made by the learned Magistrate. In exercise of my revisionary powers I order that the forfeiture be made pursuant to s. 14(2)(b) of the Act.

Reported by W.A. Sharif